

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

PACIFIC INDEMNITY COMPANY,

Plaintiff,

V.

ALFRED KEMP, Individually and d/b/a
KEMP PLUMBING

and

**MARTIN SANDBORG, Individually and d/b/a
SANDBORG PLUMBING AND HEATING,**

Defendants.

CIVIL ACTION NO.

04-11975(RWZ)

**PLAINTIFF’S
MOTION TO EXCLUDE
TESTIMONY OF
DEFENDANT KEMP’S
EXPERT QUINN HORN
UNDER RULE 702 OF THE
FEDERAL RULES OF
EVIDENCE**

Plaintiff respectfully moves the Court for an Order precluding the testimony of defendant Alfred Kemp's expert Quinn Horn, because the opinion to which Horn proposes to testify, as disclosed in his Rule 26 Report (attached to the accompanying Memorandum as Exhibit "A") is not based upon a reliable foundation and is, in fact, directly refuted by the very data upon which Horn purports to rely. Under Rule 702 of the Federal Rules of Evidence and Daubert v. Merrill Dow Pharmaceuticals, Inc., 509 U.S. 579, 591-92, 113 S. Ct. 2186 (1993), because Horn's theory does not "fit" the facts of the case, it is not "relevant to the task at hand," and must be excluded.

In support of this Motion, plaintiff relies upon the accompanying Memorandum in Support of Motion to Exclude Testimony of Defendant Kemp's Expert Quinn Horn under Rule 702 of the Federal Rules of Evidence and the Affidavit of Thomas W. Eagar and the exhibits thereto, and other documents on file in this matter specifically referenced therein.

Pursuant to Local Rule 7.1(A)(2), this will certify that counsel have conferred and have attempted in good faith to resolve or narrow the issues raised by this Motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of February, 2007, the within Motion to Preclude Testimony of Defendant Kemp's Expert Quinn Horn Under Rule 702 of the Federal Rules of Evidence has been served upon the following by way of notification of electronic filing:

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